

he could exhaust his unexhausted claim in state court. The Court granted the request and entered an order dismissing the petition without prejudice on July 10, 2003.¹

After seeking state habeas corpus relief, Petitioner filed the present petition.

DISCUSSION

I. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." *Id.* § 2243.

II. Legal Claims

The petition raises the following grounds for relief: (1) the withholding of evidence by the prosecution which would have exonerated Petitioner of guilt for the burglary and robbery counts; (2) the admission of hearsay evidence in violation of the right to confrontation; (3) instructional error; and (4) the trial court's erroneous denial of Petitioner's *Wheeler/Batson* motion based on the prosecutor's improper use of peremptory challenges against prospective African-American jurors. As it does not appear from the face of the petition that Petitioner is not entitled to relief, Respondent is ordered to respond to the petition as set forth below.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The motion to proceed *in forma pauperis* is DENIED as moot, because Petitioner has paid the filing fee. (Docket no. 2.)

2. The Clerk shall serve by certified mail a copy of this order and the petition, and all

¹On page 4 of the present petition, Petitioner states that his first federal habeas petition is still "Pending in Abeyance." As noted, however, the Court dismissed the petition without prejudice.

1 attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State
2 of California. The Clerk also shall serve a copy of this order on Petitioner.

3 3. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)** days of
4 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
5 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
6 Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state
7 trial record that have been transcribed previously and that are relevant to a determination of the
8 issues presented by the petition. If Petitioner wishes to respond to the answer, he shall do so by
9 filing a traverse with the Court and serving it on Respondent within **thirty (30)** days of his
10 receipt of the answer.

11 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer,
12 as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254
13 Cases. If Respondent files such a motion, Petitioner shall file with the Court and serve on
14 Respondent an opposition or statement of non-opposition within **thirty (30)** days of receipt of
15 the motion, and Respondent shall file with the Court and serve on Petitioner a reply within
16 **fifteen (15)** days of receipt of any opposition.

17 5. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
18 the Court informed of any change of address by filing a separate paper captioned "Notice of
19 Change of Address." He must comply with the Court's orders in a timely fashion. Failure to do
20 so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of
21 Civil Procedure 41(b)

22 IT IS SO ORDERED.

23 DATED: January 12, 2006

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25 JEFFREY S. WHITE
26 United States District Judge
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